

City of Fayetteville Staff Review Form

A. 4
 Zara L. Thomas Revocable
 Trust Settlement
 Page 1 of 12

City Council Agenda Items
 and
 Contracts, Leases or Agreements

10/16/2012
 City Council Meeting Date
 Agenda Items Only

Matt Mihalevich *MM*
 Submitted By

Engineering
 Division

Development Services
 Department

Action Required:

Approval of a Resolution authorizing the City Attorney to settle the condemnation case with Zara L. Thomas Revocable Trust U/D/T November 20, 1998 in the amount of \$2,700.00 for certain lands that were necessary for the Meadow Valley Trail Project.

\$ 2,700.00

Cost of this request

\$ 199,364.00

Category / Project Budget

Trail Development
 Program Category / Project Name

4470.9470.5810.00

Account Number

\$ 157,399.54

Funds Used to Date

Trail Improvements
 Program / Project Category Name

02016 / 1202

Project Number

\$ 41,964.46

Remaining Balance

Sales Tax Capital
 Fund Name

Budgeted Item

Budget Adjustment Attached

Ilana C. Pate
 Department Director *09-27-2012*
 Date

Previous Ordinance or Resolution # _____

John Kelly
 City Attorney *9-28-12*
 Date

Original Contract Date: _____

Original Contract Number: _____

Paul a. Babin
 Finance and Internal Services Director *9-28-2012*
 Date

Received in City Clerk's Office *09-27-12 P04:38 RCVD*
King

Terry J. Gully
 Chief of Staff *9-28-12*
 Date

Received in Mayor's Office


David L. Jordan
 Mayor *10/1/12*
 Date

Comments:

CITY COUNCIL AGENDA MEMO

City Council Meeting of October 16th, 2012

To: Mayor Jordan and City Council

Thru: Don Marr, Chief of Staff
Jeremy Pate, Director of Development Services JP
Chris Brown, City Engineer CB

From: Matt Mihalevich, Trails Coordinator MM

Date: September 26, 2012

Subject: Zara L. Thomas Revocable Trust Settlement

RECOMMENDATION:

Staff recommends Approval of a Resolution authorizing the City Attorney to settle the condemnation case with Zara L. Thomas Revocable Trust U/D/T November 20, 1998 for an additional amount of \$2,700.00 for certain lands that were necessary for the Meadow Valley Trail Project.

PROPOSAL:

The 2 mile long Meadow Valley Trail was officially opened to the public with a ribbon cutting ceremony on August 8th, 2012. This highly requested trail provides a safe alternative transportation route for the numerous residents and businesses west of I-540. On July 5th, 2011, resolution number 118-11 authorized the City Attorney to seek condemnation and possession of certain lands owned by the Zara L. Thomas Trust. The order of possession was delayed in court for several months and eventually was submitted to Arkansas Supreme Court where it was dismissed on March 15, 2012. The trail was then constructed across the Thomas property shortly after and is now enjoyed by many citizens daily.

To finalize the condemnation case, the Thomas Trust has agreed to a settlement in the total amount of \$20,000.00 as just compensation for the taking. The appraised value for the 14,305 square foot multi-use trail easement was established at \$17,300.00 and this amount is currently on deposit with the Circuit Court. After the \$17,300.00 is deducted from the \$20,000 settlement offer, the remaining funds to be paid will be \$2,700.00. In addition the Thomas family has requested a chain link fence to be constructed between their property and the new trail. This fence has been budgeted as part of the trail construction, but delayed due to the ongoing court case. Upon approval from City Council, the City will construct approximately 717 linear feet of 6' tall chain link fence at an estimated value of \$8,604.00 .

BUDGET IMPACT:

The payment for settlement in the amount of \$2,700.00 will be made from the project budget allocated for the Meadow Valley Trail Project, which is funded by the Transportation Bond Trail Improvements Fund.

RESOLUTION NO. _____

A RESOLUTION APPROVING A SETTLEMENT AGREEMENT WITH ZARA L. THOMAS, TRUSTEE OF THE ZARA L. THOMAS REVOCABLE TRUST U/D/T NOVEMBER 20, 1998, AND OF THE MARY C. THOMAS REVOCABLE TRUST U/D/T NOVEMBER 20, 1998, CONCERNING CONDEMNATION LITIGATION FILED REGARDING THE EXTENSION OF MEADOW VALLEY TRAIL (U OF A FARM TRAIL)

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves an agreement with Zara L. Thomas, Trustee of the Zara L. Thomas Revocable Trust u/d/t November 20, 1998, and of the Mary C. Thomas Revocable Trust u/d/t November 20, 1998, in a total amount of \$20,000.00, as full and final settlement of condemnation litigation (City of Fayetteville v. Thomas, Washington County Circuit Court Case No. CV 2011-2220-7) filed regarding the extension of Meadow Valley Trail (U of A Farm Trail).

Section 2: That the City Council of the City of Fayetteville, Arkansas, in furtherance of the settlement, hereby approves payment of an additional \$2,700.00 over and above the \$17,300.00 placed on deposit with the court.

PASSED and APPROVED this 16th day of October, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

KIT WILLIAMS
FAYETTEVILLE CITY ATTORNEY

JASON B. KELLEY
Assistant City Attorney

Judy Housley
Office Manager

Phone (479) 575-8313
FAX (479) 575-8315
TDD (479) 521-1316



113 W. Mountain, Suite 302
Fayetteville, AR 72701-6083

September 25, 2012

S. Lance Cox, Esq.
Cox, Cox & Estes, PLLC
P.O. Box 878
Fayetteville, AR 72702

Re: City of Fayetteville v. Thomas, Wash. Co. Circuit No. CV 11-2220-7

Dear Lance:

In accord with our recent Email communications regarding the above-referenced case, please allow this letter to formalize the terms of settlement to which the City and Mr. Thomas have agreed.

Subject to the approval of the Mayor and City Council of Fayetteville, the City agrees to pay a total of \$20,000.00 as just compensation for the taking at issue in the above-referenced case. This \$20,000.00 represents the \$17,300.00 currently on deposit with the circuit court, plus an additional \$2,700.00 to be paid directly to your client. Additionally, the City agrees to construct a chain-link fence along the trail easement in the location of the current barbed wire fence. In exchange, your client agrees to accept the above-stated and to execute a trail easement deed and any documents necessary for dismissal of the above-referenced court case.

We will be requesting this proposal be considered at the October 16, 2012, City Council meeting. Assuming a positive outcome, I will then contact you to work out final payment and execution of documents.

Sincerely,

A handwritten signature in black ink, appearing to read "J. B. Kelley", written over a horizontal line.

Jason B. Kelley
Assistant City Attorney

cc: C. Brown
M. Mihalevich

From: "Lance Cox" <lcox@coxfirm.com>
To: "Jason Kelley" <jkelley@ci.fayetteville.ar.us>
Date: 9/25/2012 1:46 PM
Subject: RE: Z. Thomas

Sounds good, Jason. Thanks for your help in getting this resolved.

lc

S. Lance Cox

Cox, Cox & Estes, PLLC

Arvest Bank Plaza

P.O. Box 878

75 N. East Ave., Ste. 400

Fayetteville, AR 72702

(479) 251-7900 (tel.)

(479-251-7910 (fax)

PENALTY NOTICE: To comply with certain U.S. Treasury regulations, we inform you that, unless expressly stated otherwise, any U.S. federal tax advice contained in this e-mail, including attachments, is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding any penalties that may be imposed by the Internal Revenue Service.

From: Jason Kelley [mailto:jkelley@ci.fayetteville.ar.us]
Sent: Tuesday, September 25, 2012 1:12 PM
To: Lance Cox
Subject: RE: Z. Thomas

Lance,

We can do the chain link fence.

Assuming the Council and Mayor approve (I have no reason to doubt they will), it appears we have a deal.

I will formalize everything in a letter to you and begin the process of getting this on the next available city

council agenda for approval.

Jason K.

Jason B. Kelley

Assistant City Attorney

City of Fayetteville, Arkansas

113 W. Mountain St., Suite 302

Fayetteville, Arkansas 72701

Telephone (479) 575-8313

Facsimile (479) 575-8315

Email: jkelly@ci.fayetteville.ar.us

Website: www.accessfayetteville.org <<http://www.accessfayetteville.org/>>

>>> "Lance Cox" <lcox@coxfirm.com> 9/25/2012 9:44 AM >>>

Jason,

I've heard back from my clients in regard to settlement. They are agreeable to accepting \$20,000 for the land, but they would like a chain link fence instead of a wooden privacy fence. My last discussion with them about fencing was approximately a year ago, and my memory was that they wanted a wooden privacy fence. I was wrong.

I assume a chain link fence is actually less expensive than a wooden privacy fence?? Just let me know if that's an issue. Otherwise, it appears we have this settled.

Also, I don't know what kind of lighting, if any, currently exists out there (i.e., on the trail, in proximity to Mr. Thomas' house), but if the city would make sure that that area of the trail is reasonably lit the Thomases would certainly appreciate it. This is just a request, as it relates to Mr. Thomas' safety; it is not an additional term or requirement of settlement.

Thanks Jason.

lance

S. Lance Cox

Cox, Cox & Estes, PLLC
Arvest Bank Plaza
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From: Jason Kelley [mailto:jkkelley@ci.fayetteville.ar.us]
Sent: Monday, September 24, 2012 11:15 AM
To: Lance Cox
Subject: RE: Z. Thomas

Lance,

Here's what we can offer:

Subject to Mayor and City Council approval, we would agree to pay Mr. Thomas a total of \$20,000.00. This represents the \$17,300.00 currently on court deposit, plus and additional \$2,700.00.

The City, at its expense, would also construct a wooden privacy fence in the location where the barbed wire fence is currently located.

Let me know your position, after you have a chance to meet with the family.

Jason K.

Jason B. Kelley

Assistant City Attorney

City of Fayetteville, Arkansas

113 W. Mountain St., Suite 302

Fayetteville, Arkansas 72701

Telephone (479) 575-8313

Facsimile (479) 575-8315

Email: jkelly@ci.fayetteville.ar.us

Website: www.accessfayetteville.org <<http://www.accessfayetteville.org/>>

>>> "Lance Cox" <lcox@coxfirm.com> 9/24/2012 10:10 AM >>>

K. Sounds good. Thanks Jason.

sent via ipad

S. Lance Cox

Cox, Cox & Estes, PLLC

Arvest Bank Plaza

P.O. Box 878

75 N. East Ave., Ste. 400

Fayetteville, AR 72702

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penalties that may be imposed by the Internal Revenue Service.

From: Jason Kelley [mailto:jkelly@ci.fayetteville.ar.us]
Sent: Monday, September 24, 2012 9:19 AM
To: Lance Cox
Subject: Z. Thomas

Lance,

We may be close to something here. I am meeting with the city engineer this morning to finalize our position. You should get a solid word from me today.

Jason K.

Jason B. Kelley

Assistant City Attorney

City of Fayetteville, Arkansas

113 W. Mountain St., Suite 302

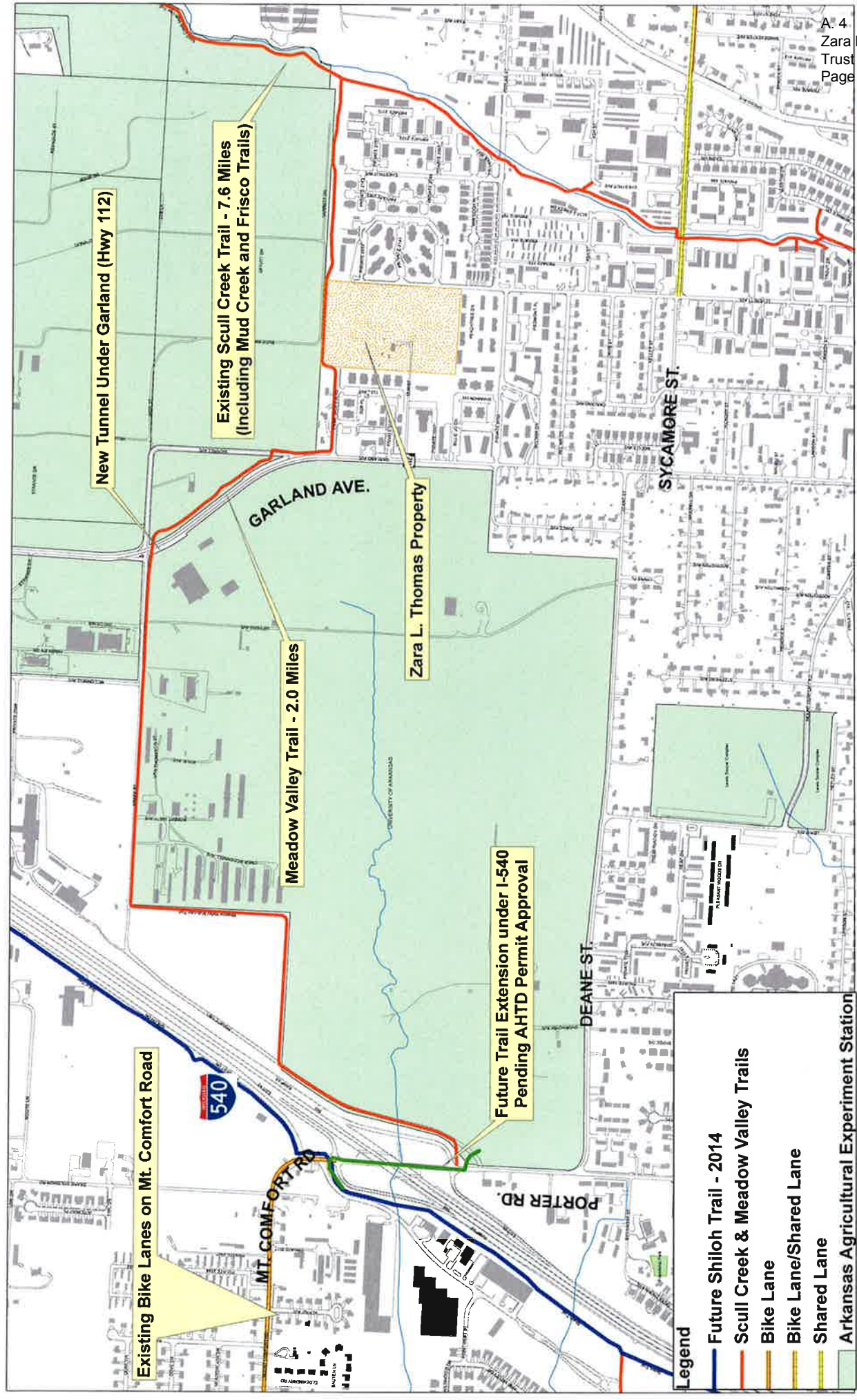
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Email: jkelly@ci.fayetteville.ar.us

Website: www.accessfayetteville.org <<http://www.accessfayetteville.org/>>



Meadow Valley Trail
 2.0 Miles


CHECK REQUEST

Date: 16-Oct-12 Manual Check
 Vendor Number: _____ Mail Yes No
 Payable to: Zara L Thomas Revocable Trust Return Check to: City Attorney's Office
 _____ Send Copy to: _____

For: Property condemnation settlement (PN 765-05140-000) Separate Check Code _____
City of Fayetteville vs. Thomas, Wash Co. Circuit No. CV 11-2220-7 Bank Number 012
 Payable From: Fund Name Sales Tax Capital Amount of Check \$ 2700.00
 Charged as follows:

Account Name	Amount	Accounting Use - Receiving						
		Fund	Dept	Sub Dept	Base	Detail	Project	Sub Project
Easements	2,700.00	4470	9470		5810	00	02016	1202
TOTAL	\$2,700.00							

Additional Approval:
 Does Not Meet Purchasing Policy
 Contract Payment
 Other
 Approved: _____

Prepared by: Ginny Gundlach
 Approved by: 
 Entered: _____

G/L Account Number _____
 Accounting Use - Receiving _____
 Key Code _____

